

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

HAYDEN SCOTT ROSE,

Plaintiff,

v.

PRESQUE ISLE VILLAS
CONDOMINIUM HOMEOWNERS
ASSOCIATION, INC.; PRESQUE ISLE
VILLAS CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.,
BOARD OF DIRECTORS;
COMMUNITY ASSOCIATION
MANAGEMENT, Ltd.; and BAGWELL
HOLT SMITH, P.A.;

Defendants.

Civil Action No. 1:22-CV-478

ANSWER OF BAGWELL HOLT SMITH, P.A.

Defendant Bagwell Holt Smith, P.A., (“Answering Defendant” or “Defendant”), by and through the undersigned attorneys, hereby responds to Plaintiff Hayden Scott Rose’s (“Plaintiff”) Amended Complaint as follows:

In response to the specific allegations of Plaintiff’s Amended Complaint, Defendant hereby answers the correspondingly numbered paragraphs of Plaintiff’s Amended Complaint as follows:

Preliminary Statement

1. It is admitted that Plaintiff is purporting to bring a civil action against Answering Defendant pursuant to 15 U.S.C. §1692 et seq., N.C. Gen. Stat. § 58-70-

90, *et seq.*, N.C. Gen. Stat. 75-50, *et. seq.*, breach of fiduciary duty, constructive fraud, and equitable accounting, but it is denied that Plaintiff is entitled to any relief against Defendant under these or any other theories either legal or equitable. Except as expressly admitted, the allegations of this paragraph are denied.

Jurisdiction and Venue

2. The allegations of this paragraph are admitted.
3. The allegations of this paragraph are admitted.

Parties

4. Answering Defendant incorporates the averments of paragraphs 1 – 3 as if fully set forth in their entirety herein.
5. The allegations of this paragraph, subparagraphs a. through c., set forth legal conclusions and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies the allegations of these subparagraphs. It is admitted upon information and belief that Plaintiff was the subject of collection activity and that Plaintiff was a resident of Chapel Hill, North Carolina. Except as expressly admitted, the allegations of this paragraph are denied.
6. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph, including subparagraphs a. through d., and on that basis, denies, generally and specifically, each and every allegation contained therein.
7. The allegations of this paragraph are admitted upon information and belief.

8. It is admitted that at various times the listed individuals served as Board members. The remaining allegations of this paragraph, subparagraphs b. through d., set forth legal conclusions and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies the allegations of these subparagraphs b. through d.

9. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph, including subparagraphs a. through d., and on that basis, denies, generally and specifically, each and every allegation contained therein.

10. It is admitted that Defendant Community Association Management Limited (“CAM”) is a company doing business in North Carolina. The allegations of subparagraphs b. through c. set forth legal conclusions and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies the allegations of these subparagraphs. Except as expressly admitted, the allegations of this paragraph are denied.

11. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

12. It is admitted that Answering Defendant is a company doing business in North Carolina. Except as expressly admitted, the allegations of this paragraph are denied.

13. The allegations of this paragraph are admitted.

14. The allegations of this paragraph, including subparagraphs a. through c., set forth legal conclusions and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies the allegations of these subparagraphs.

Factual Allegations

15. Answering Defendant incorporates the averments of paragraphs 1 – 14 as if fully set forth in their entirety herein.

16. This paragraph is not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

17. This paragraph is not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

18. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

19. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

20. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

21. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

22. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

23. This paragraph contains an unverifiable hypothetical and therefore Answering Defendant denies the allegations of this paragraph.

24. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

25. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

26. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

27. It is admitted that Plaintiff sent an email on November 30, 2020, but Answering Defendant denies the remaining allegations in this paragraph as the email referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

28. The allegations of this paragraph are denied.

29. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

30. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

31. The allegations of this paragraph are denied.

32. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

33. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

34. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

35. The allegations of this paragraph are denied as this paragraph is ambiguous.

36. The allegations of this paragraph are denied as this paragraph is ambiguous, and Answering Defendant further denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

37. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

38. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

39. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

40. The allegations of this paragraph are denied as this paragraph is ambiguous.

41. The allegations of this paragraph are denied.

42. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

43. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

44. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

45. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

46. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

47. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

48. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

49. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

50. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

51. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

52. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

53. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

54. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

55. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph related to the indefinite timeframe stated by Plaintiff, and on that basis, denies, generally and specifically, each and every allegation contained therein. Further, Answering Defendant denies the allegations in this paragraph as the documents referenced in this paragraph speak for themselves and will be further explained through evidence and testimony.

56. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

57. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

58. It is admitted that Answering Defendant sent a letter to Plaintiff dated June 22, 2021, and the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony. Except as expressly admitted, the allegations in this paragraph are denied.

59. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

60. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

61. The allegations of this paragraph are denied.

62. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

63. The allegations of this paragraph are denied.

64. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

65. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

66. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

67. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

68. The allegations of this paragraph are denied.

69. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph related to the indefinite timeframe stated by Plaintiff, and on that basis, denies, generally and specifically, each and every allegation contained therein. Further, Answering Defendant denies the allegations in this paragraph as the documents referenced in this paragraph speak for themselves and will be further explained through evidence and testimony.

70. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

71. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

72. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

73. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

74. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

75. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

76. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

77. The allegations in this paragraph are denied.

78. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

79. The allegations in this paragraph are denied.

80. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein. Further, Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

81. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

82. The allegations of this paragraph are denied.

83. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

84. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

85. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

86. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

87. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

88. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

89. The allegations of this paragraph are denied.

90. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

91. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

92. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

93. The allegations of this paragraph are denied.

94. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

95. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

96. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

97. The allegations of this paragraph are denied.

98. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

99. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

100. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

101. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

102. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

103. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

104. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

105. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

106. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

107. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

108. The allegations of this paragraph are denied.

109. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

110. The allegations of this paragraph are denied.

111. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

112. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

113. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

114. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

115. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

116. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

117. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

118. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

119. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

120. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

121. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

122. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

123. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

124. The allegations of this paragraph are admitted.

125. It is admitted that Answering Defendant represented CAM and Presque and sent the October 22, 2021, letter to Plaintiff.

126. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

127. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

128. It is admitted that Answering Defendant sent the letter on behalf of its client Presque.

129. The allegations of this paragraph are denied.

130. To the extent this paragraph refers to the October 22, 2021, letter the allegations of this paragraph are admitted.

131. The allegations of this paragraph are admitted.

132. It is admitted that the October 22, 2021, letter was an attempt to collect a valid, enforceable debt owed by Rose.

133. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

134. The allegations of this paragraph are admitted.

135. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

136. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

137. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

138. It is admitted that Plaintiff requested to pay certain sums due but not others. Except as expressly admitted, the allegations of this paragraph are denied.

139. It is admitted that Plaintiff made requests of BHS, but it is denied that such requests were proper or necessary. Except as expressly admitted, the allegations of this paragraph are denied.

140. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

141. The allegations of this paragraph are denied.

142. It is denied that Answering Defendant made any “threat.” Any remaining allegations of this paragraph are denied.

143. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

144. The allegations of this paragraph are denied.

145. The allegations of this paragraph are denied.

146. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

147. The allegations of this paragraph are denied.

148. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

149. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

150. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

151. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

152. The allegations in this paragraph are ambiguous and, therefore, denied.

153. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

154. The allegations in this paragraph are ambiguous and Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of

the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

155. It is admitted that Answering Defendant has not filed a foreclosure action against Plaintiff. Except as expressly admitted, the allegations of this paragraph are denied.

156. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

157. It is admitted that Answering Defendant has not published any information regarding Plaintiff directly to any credit reporting agency. Except as expressly admitted, the allegations of this paragraph are denied.

158. It is denied that Answering Defendant made any “threat.” Any remaining allegations of this paragraph are denied.

159. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

160. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

161. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

162. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

163. The allegations of this paragraph are admitted as to Answering Defendant.

164. The allegations of this paragraph are denied as they are contrary to the Association's by-laws and declaration.

165. The allegations of this paragraph are denied.

166. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony, and further states that the legal conclusions in the letter were wrong.

167. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

168. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony, and further states that the legal conclusions in the letter were wrong.

169. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony, and further states that the legal conclusions in the letter were wrong.

170. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony, and further states that the legal conclusions in the letter were wrong.

171. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

172. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

173. The allegations of this paragraph are denied.

174. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

175. It is admitted that Answering Defendant copied Plaintiff's attorney and had knowledge of Plaintiff's attorney's email address. Except as expressly admitted, the allegations of this paragraph are denied.

176. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

177. It is admitted that Answering Defendant contacted Plaintiff. Except as expressly admitted, the allegations of this paragraph are denied.

178. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

179. The allegations of this paragraph are admitted as to Answering Defendant.

180. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

181. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

182. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

183. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

184. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

185. It is admitted that Answering Defendant sent an email to Plaintiff on April 4, 2022. Except as expressly admitted, Answering Defendant denies the allegations in

this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

186. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

187. Answering Defendant denies the allegations in this paragraph as the document referenced in this paragraph speaks for itself and will be further explained through evidence and testimony.

188. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

189. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

190. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

191. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

192. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

193. This paragraph states a legal conclusion and does not require a response. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

194. The allegations of this paragraph are denied.

195. The allegations of this paragraph are denied.

196. Answering Defendant lacks sufficient information or knowledge at this time to form a belief as to the truth of the allegations in this paragraph and on that basis, denies, generally and specifically, each and every allegation contained therein.

197. The allegations of this paragraph are denied.

Violations of NC Gen. Stat. § 75-50 *et seq.*

198. Answering Defendant incorporates the averments of paragraphs 1 – 197 as if fully set forth in their entirety herein.

199. The allegations of this paragraph are denied.

200. The allegations of this paragraph are denied.

201. The allegations of this paragraph are denied.

202. The allegations of this paragraph are denied.

203. The allegations of this paragraph are denied.

204. The allegations of this paragraph are denied.

205. The allegations of this paragraph are denied.

206. The allegations of this paragraph are denied.

Violations of NC Gen. Stat. § 58-70-90 *et seq.*

207. Answering Defendant incorporates the averments of paragraphs 1 – 206 as if fully set forth in their entirety herein.

208. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

209. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

210. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

211. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

212. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

213. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

214. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

215. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

216. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

217. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

218. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

Violations of NC Gen. Stat. § 75-50 *et seq.* (Alternative)

219. Answering Defendant incorporates the averments of paragraphs 1 – 218 as if fully set forth in their entirety herein.

220. The allegations in this paragraph do not contain an allegation of fact and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

221. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

222. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

223. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

224. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

225. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

226. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

227. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

228. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

Violations of the Fair Debt Collections Practices Act

229. Answering Defendant incorporates the averments of paragraphs 1 – 228 as if fully set forth in their entirety herein.

230. The allegations of this paragraph are denied.

231. The allegations of this paragraph are denied.

232. The allegations of this paragraph are denied.

233. The allegations of this paragraph are denied.

234. The allegations of this paragraph are denied.

235. The allegations of this paragraph are denied.

236. The allegations of this paragraph are denied.

237. The allegations of this paragraph are denied.

Breach of Fiduciary Duty

238. Answering Defendant incorporates the averments of paragraphs 1 – 237 as if fully set forth in their entirety herein.

239. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

240. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

241. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

242. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

243. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

244. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

245. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

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247. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

248. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

249. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

250. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

251. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

252. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

253. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

254. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

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258. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

259. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

260. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

Constructive Fraud

261. Answering Defendant incorporates the averments of paragraphs 1 – 260 as if fully set forth in their entirety herein.

262. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

263. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

264. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

265. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

266. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

267. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

Equitable Accounting

268. Answering Defendant incorporates the averments of paragraphs 1 – 267 as if fully set forth in their entirety herein.

269. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

270. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

271. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

272. The allegations in this paragraph are not directed to Answering Defendant and no response is necessary. To the extent a response is deemed necessary, Answering Defendant denies all allegations of this paragraph.

Damages

273. Answering Defendant incorporates the averments of paragraphs 1 – 272 as if fully set forth in their entirety herein.

274. The allegations of this paragraph are denied.

275. The allegations of this paragraph, including subparagraphs a., i. through v., and b., are denied.

Jury Trial Demand

276. It is admitted that Plaintiff demands a trial by jury.

GENERAL DENIAL

Answering Defendant denies any and all allegations within Plaintiff's Complaint not previously specifically addressed, and any allegations that may be contained within Plaintiff's Prayer for Relief are also denied.

AFFIRMATIVE DEFENSES

Answering Defendant sets forth the following affirmative defenses but by doing so does not assume the burden of proof on any issue where, pursuant to law, Plaintiff has the burden of proof.

- i. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- ii. Plaintiff's causes of action fail as a matter of law as Plaintiff has not suffered any damages.
- iii. Assuming Plaintiff suffered any damages, which is again denied, Plaintiff's claims fail as Plaintiff has failed to mitigate or take reasonable steps to reduce such damages.
- iv. One or more of Plaintiff's causes of action may be barred by laches, estoppel, waiver, release, or unclean hands.

v. Plaintiff's damages and/or any harm to Plaintiff was the result of actions of parties other than Answering Defendant, and such acts and omissions by other parties are the legal, actual, and proximate cause of any harm or damage to Plaintiff.

vi. Plaintiff's causes of action fail as a matter of law as Plaintiff caused his own damages by his own conduct and is therefore barred from recovering from Defendants.

vii. Plaintiff's punitive damages claim fails to the extent that the Complaint fails to specifically state with particularity any aggravating factor that supports any award of punitive damages as required by N. C. R. Civ. P. 9(k), and fails to plead facts that would meet the standards for recovery of punitive damages required by N.C.G.S. §1D-15. Moreover, Plaintiff's claim for punitive damages is barred because an award of punitive damages in this case would violate the Eighth Amendment of the United States Constitution, and because an award of punitive damages in this case would be excessive and disproportionate to the award of compensatory damages and as such would violate due process of law.

viii. Answering Defendant demands that the jury determine the amount of punitive damages separately from the amount of compensation for all other damages and further states that any award of punitive damages against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever is greater. Answering Defendant demands that if a trier of fact returns a verdict for punitive damages in excess of the maximum amount allowable by law, that the trial court reduce the award and enter judgment for punitive damages in the proper amount as authorized by law. Answering Defendant also

demands that these requirements not be made known to the trier of fact through any means, including *voir dire*, the introduction into evidence, argument, or instructions to the jury.

ix. One or more of Plaintiff's causes of action fail as a matter of law as Answering Defendant is not a "debt collector" as defined by the Fair Debt Collections Practices Act.

x. One or more of Plaintiff's causes of action fail as a matter of law as the acts of Answering Defendant complained of by Plaintiff are not in or affecting commerce.

xi. Plaintiff's causes of action against Answering Defendant fail as Answering Defendant's interpretation of the laws and rules related to homeowner's obligations and responsibilities as set forth by the declaration and by-laws of the community were reasonable, and even if such interpretations are ultimately deemed to be incorrect, Answering Defendant's acts and conduct was reasonable.

xii. One or more of Plaintiff's causes of action fail as a matter of law as Answering Defendant did not make any false statement.

xiii. One or more of Plaintiff's causes of action fail as a matter of law as Answering Defendant did not make any threats.

xiv. Plaintiff's causes of action fail as a matter of law and should be dismissed as all Answering Defendant's conduct complained of by Plaintiff was justified and authorized by applicable statutory and common law.

xv. Answering Defendant hereby adopts and incorporates by reference as if fully rewritten herein any and all other affirmative defenses as asserted by any other party

to this action to the extent that the facts of this matter support such adoption and such affirmative defense is applicable to Answering Defendant.

xvi. Answering Defendant hereby reserves the right to assert any additional and further defenses as may be revealed by additional information received or uncovered through the discovery process.

DEMAND FOR JURY TRIAL

Answering Defendant hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Answering Defendant, having answered the allegations in the Plaintiff's Complaint, makes the following prayer for relief:

1. That Plaintiff have and recover nothing from Answering Defendant, and that the Plaintiff's claims and Complaint be dismissed with prejudice; and
2. That this Court enter judgment for such other and further relief as the Court deems just and proper.

This the 10th day of August, 2022.

/s/Russell M. Racine

Russell M. Racine

NC Bar #33593

Robert El-Jaouhari

NC Bar #49184

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Attorneys for Defendant Bagwell
Holt Smith, P.A.

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record for all parties in this case.

This the 10th day of August, 2022.

/s/Russell M. Racine

Russell M. Racine

NC Bar #33593

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